

Federal Railroad Administration, DOT

§ 221.13

whom the Administrator has delegated his authority under this part.

(h) *Effective intensity* means that intensity of a light in candela as defined by the Illuminating Engineering Society's Guide for Calculating the Effective Intensity of Flashing Signal Lights, November, 1964.

(i) *Qualified person* means any person who has the skill to perform the task and has received adequate instruction.

[42 FR 2321, Jan. 11, 1977; 42 FR 3843, Jan. 21, 1977, as amended at 51 FR 25185, July 10, 1986]

§ 221.7 Civil penalty.

Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$500 and not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix C to this part for a statement of agency civil penalty policy.

[53 FR 28600, July 28, 1988, as amended at 53 FR 52930, Dec. 29, 1988; 63 FR 11621, Mar. 10, 1998]

§ 221.9 Waivers.

(a) A railroad may petition the Federal Railroad Administrator for a waiver of compliance with any requirement prescribed in this part.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, he may grant the waiver subject to any condition he deems necessary. Notice of each waiver granted, including a statement of the reasons therefor, will be published in the FEDERAL REGISTER.

§ 221.11 State regulation.

Notwithstanding the provisions of this part, a State may continue in force any law, rule, regulation, order, or standard that was in effect on July 8, 1976, relating to lighted marking devices on the rear car of freight trains except to the extent that such law, rule, regulation, order, or standard would cause such cars to be in violation of this part.

Subpart B—Marking Devices

§ 221.13 Marking device display.

(a) During the periods prescribed in paragraph (b) of this section, each train to which this part applies that occupies or operates on main track shall (1) be equipped with, (2) display on the trailing end of the rear car of that train, and (3) continuously illuminate or flash a marking device prescribed in this subpart.

(b) Unless equipped with a functioning photoelectric cell activation mechanism complying with paragraph (c) of this section, the marking devices prescribed by this subpart shall be illuminated continuously or flash during the period between one hour before sunset and one hour after sunrise, and during all other hours when weather conditions so restrict visibility that the end silhouette of a standard box car cannot be seen from $\frac{1}{2}$ mile on tangent track by a person having 20/20 corrected vision.

(c) Marking devices prescribed by this part and equipped with a functioning photoelectric cell activation mechanism shall illuminate or flash the device continuously when there is less than 1.0 candela per square meter of ambient light.